

AMENDED IN ASSEMBLY MAY 7, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

Assembly Joint Resolution

No. 9

Introduced by Assembly Member Chang
(Coauthors: Assembly Members Baker, Gallagher, and Steinorth)
(Coauthor: Senator Huff)

February 25, 2015

Assembly Joint Resolution No. 9—Relative to patents.

LEGISLATIVE COUNSEL’S DIGEST

AJR 9, as amended, Chang. Patent reform.

This measure would urge the President and the Congress of the United States to craft a balanced and workable approach to reduce incentives for and minimize ~~abusive and frivolous~~ *unnecessary* patent litigation while ensuring that legitimate patent enforcement rights are protected and maintained.

Fiscal committee: no.

1 WHEREAS, The principle of intellectual property is enshrined
2 in the United States Constitution, specifically under clause 8 of
3 Section 8 of Article I of the United States Constitution, which
4 empowers Congress to “promote the Progress of Science and useful
5 Arts, by securing for limited Times to Authors and Inventors the
6 exclusive Right to their respective Writings and Discoveries”; and
7 WHEREAS, A robust patent system is critical to promote
8 economic growth and innovation and ensure just compensation
9 for the labor and proliferation of beneficial ideas and innovations;
10 and

1 WHEREAS, California accounts for 25 percent of the nation's
2 patents; and

3 WHEREAS, The state recognizes and respects the importance
4 of patent protections and patent enforcement rights to driving
5 continued research, investment, technological innovation, and job
6 creation across multiple sectors of our economy; and

7 WHEREAS, Small businesses depend on patents to secure
8 investments, and firms with fewer than 25 employees hold nearly
9 one-quarter of United States-held patents in innovative emerging
10 technologies; and

11 WHEREAS, Enforcement of legitimate patent rights is essential
12 to promoting an innovation environment that fuels economic
13 growth; and

14 WHEREAS, There is increasing concern about abusive litigation
15 by predatory Patent Assertion Entities (PAEs), which are built on
16 a rent-seeking business model that exploits the patent legal system
17 for financial gain without producing or manufacturing anything
18 of value for society; and

19 WHEREAS, Many PAEs attain ambiguous patents with the sole
20 intent of filing patent infringement lawsuits. PAEs assert these
21 patents against businesses of all sizes and in all industries, often
22 years after the product has become standard and widely used; and

23 WHEREAS, PAEs rarely earn successful judgments in court,
24 underscoring the questionable merits of these particular patent
25 cases. However, given the high cost and risks associated with
26 patent litigation, most defendants choose to settle in order to avoid
27 further financial loss. Indeed, many PAEs will offer royalty
28 settlements below market value in order to encourage settlement
29 and avoid trial; and

30 WHEREAS, Predatory PAEs have a detrimental impact on the
31 ~~economy~~. *economy and innovation*. PAE activities cost businesses
32 \$29 billion directly, mostly borne by ~~small and medium~~ *small-*
33 *and medium-sized* businesses; and

34 ~~WHEREAS, The costs of frivolous patent lawsuits constrain~~
35 ~~innovation by increasing the risk to investors and businesses of~~
36 ~~introducing new products into the marketplace; and~~

37 WHEREAS, The growth of patent litigation is directly tied to
38 aggressive PAEs in recent years. In 2010, PAEs were responsible
39 for 29 percent of patent litigation, and by 2012 PAEs represented
40 62 percent of all patent suits; and

1 WHEREAS, The California economy is especially vulnerable
2 to ~~opportunistic litigation given a high proportion of~~ lawsuits
3 directed at information technology patents; and

4 WHEREAS, Federal legislation is necessary to prevent and
5 deter abusive patent litigation; now, therefore, be it

6 *Resolved by the Assembly and the Senate of the State of*
7 *California, jointly,* That the Legislature urges the President and
8 the Congress of the United States to craft a balanced and workable
9 approach to reduce incentives for and minimize ~~abusive and~~
10 ~~frivolous unnecessary~~ patent litigation while ensuring that
11 legitimate patent enforcement rights are protected and maintained;
12 and be it further

13 *Resolved,* That the Chief Clerk of the Assembly transmit copies
14 of this resolution to the President and Vice President of the United
15 States, the Speaker and Minority Leader of the House of
16 Representatives, the Majority Leader and Minority Leader of the
17 Senate, and each member of the California delegation to the United
18 States Congress.